



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

Ms. Mary Koks
Co-Chair of the US Oil Recovery Site PRP Group
Bank of America Center
700 Louisiana Street, Suite 4600
Houston, TX 77002-2845

FEB 22 2013

Constance Westfall
Co-Chair, U.S. Oil Recovery Site PRP Group
Strasburger & Price, LLP
901 Main Street, Ste 4400
Dallas, TX 75202-3794

Re: U.S. Oil Recovery Superfund Site
Meeting with the PRP Group on February 12, 2013

Dear Co-Chairs:

The purpose of this letter is to provide a response to the issues you raised during the meeting you requested with me, Deputy Division Director Pam Phillips, Regional Counsel's Superfund Branch Chief Mark Peycke, Remedial Branch Deputy Associate Director John Meyer, and the Site Team assigned to the U.S. Oil Recovery Superfund Site ("Site") on February 12, 2013. Each of the main points you raised will be addressed separately in an attachment to this letter. I trust that the discussions during the meeting and the attempts to address your concerns will continue the Environmental Protection Agency's ("EPA") efforts to provide a path forward for the upcoming Remedial Investigation and Feasibility Study ("RI/FS") to be performed at the Site.

Several of the issues you raised concern matters of civil enforcement under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," or the "Act"), 42 U.S.C. § 9601, *et. seq.* The EPA is committed to following its statutory and regulatory obligations under the Act and implementing them pursuant to its own enforcement policy ~~where~~ applicable. In so doing, the EPA looks to all matters of civil enforcement, including sufficiency of available evidence, elements and burdens of proof, interpretation of statutory, regulatory and applicable case law and civil, prosecutorial discretion.

Likewise, the EPA is committed to following its obligations under the Act, the National Contingency Plan ("NCP"), 40 C.F.R Part 300, and its own policy guidance when implementing the process for responding to a Site, including the process for an RI/FS. The EPA sees no reason to deviate from its policy guidance with respect to the upcoming RI/FS work to be performed at the Site. This applies, as well, to responding to the public's requests for information concerning the Site under the Freedom of Information Act ("FOIA"), and the managing, accounting for, and recovery of Site costs incurred at taxpayer expense.

I appreciate your presentation and our discussions at the meeting. The EPA is looking forward to having the Group and other PRPs engage in the upcoming RI/FS work. If you have any questions, please do not hesitate to contact me.

Sincerely,



Carl Edlund
Superfund Division Director

ATTACHMENT

RESPONSE TO SPECIFIC POINTS AND ISSUES

Liability and Evidentiary Issues

The PRP Group raised an issue concerning the sufficiency of evidence for liability purposes and the identification of additional potentially responsible parties ("PRPs"). The EPA remains committed to continuing its investigation and identification of those parties whom the EPA has obtained sufficient evidence of liability under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). Although the PRP Group may have a different interpretation of what constitutes sufficient evidence, the Site Team is committed to re-evaluating evidence obtained concerning "used oil," "waste oil," "tank bottoms" and other material sent to the Site that may be considered a "hazardous substance" as defined under CERCLA and 40 C.F.R. 302.4. Likewise, the Site Team is equally committed to continuing the review and evaluation of the volumes of documents received in response to the EPA's requests for information sent to over 100 entities pursuant to Section 104(e) of CERCLA. As stated during our meeting, the Site Team is willing to consider any additional evidence the PRP Group can provide in its efforts to identify any additional parties who fall under the liability prongs of Section 107(a) of CERCLA. In so doing, I understand the PRP Group has certain information, in the form of comprehensive volumetric waste-in tables and spreadsheets, that it intends to share with the Site Team, along with other information it has gathered in its own investigation that could help the EPA identify additional parties. The Site Team remains open for communication with your "PRP Search" contractor to help the EPA's in its investigation. Along the same lines concerning liability, you raised the issue of the roll-off box owners whose roll-off boxes were rented by the Site-property's owner/operator and which are still on-site full of waste. The Site Attorney is currently researching that legal issue and has engaged the assistance of the Office of General Counsel and the EPA Removal Action Workgroup attorneys about it.

FOIA Request and Information Sharing

The PRP Group raised the issue concerning its FOIA request for responses to Section 104(e) Information Request letters to those parties who are not members of the PRP Group. As stated during our meeting, the FOIA Program has been engrossed as of late while processing numerous FOIA requests on behalf of the Region. Nevertheless, Superfund management has met with FOIA Program management in an effort to give completion of your FOIA requests a top priority. In addition, the Site Team will continue to share other releasable information with the PRP Group, including a list of recipients of General Notice Letters, Special Notice Letters and Section 104(e) Information Request Letters.

Special Account

The PRP Group raised the issue concerning the creation of a special account for any funds the EPA obtains through settlements of Ability-To-Pay Claims. The Site Team intends to include special account language in any Ability-to-Pay settlement agreements to help defray oversight costs for

the upcoming RI/FS work. In addition, such settlement agreements, if successful, require a 30-day public comment period allowing the PRP Group and others to provide comments to the EPA. This should ensure the PRP Group will be made aware of the content and language of any proposed Administrative Orders on Consent (“AOC”) involving payment of response costs.

Site Charging Between 400 and 200 N. Richey Street

The PRP Group raised the issue concerning divisibility of costs between the two properties within the Site. The Site Team is engaged in considering options to bifurcate contractor and EPA oversight costs between the two properties after the effective date of the presumed AOC for RI/FS.

Special Notice Letters

The PRP Group raised the issue of sending one Special Notice Letter to the PRP Group’s Point of Contact on behalf of all members of the Group. The EPA is willing to issue the PRP Group one Special Notice Letter to the Point of Contact the Group designates in writing (such as by e-mail, for instance) who is authorized to accept it on behalf of all the Group’s members. The EPA requests that a Point of Contact authorized to accept the Special Notice Letter on behalf of all members of the Group be designated in writing no later than February 29, 2013.